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KARL MORELL

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August 9, 2005

BY HAND DELIVERY

The Honorable Vernon Williams
Secretary
Surface Transportation Board
1925 K Street, N.W., Suite 700
Washington, DC 20423-0001Re: STB Finance Docket No. 34737, Yellowstone Valley Railroad, Inc.
-- Lease Exemption -- BNSF Railway Company

Dear Secretary Williams:

Attached for filing are the original and ten copies of the Reply To Petition
For Stay.Please time and date stamp the extra copy of the Reply and return it with
our messenger.

If you have any questions, please contact me.

Sincerely yours,

Karl Morell

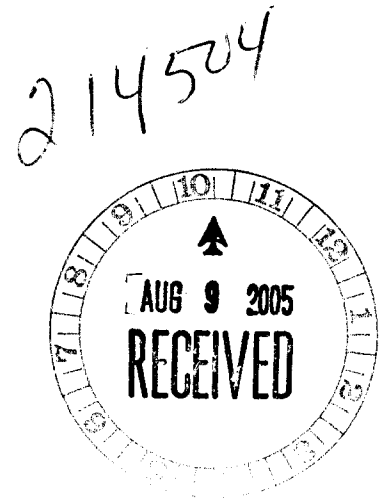
Enclosures

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34737

YELLOWSTONE VALLEY RAILROAD, INC.
--LEASE AND OPERATION EXEMPTION--
BNSF RAILWAY COMPANY

REPLY TO PETITION FOR STAY



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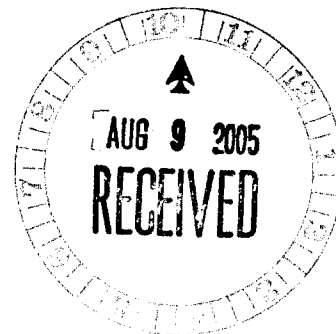
Dated: August 9, 2005

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34737

YELLOWSTONE VALLEY RAILROAD, INC.
--LEASE AND OPERATION EXEMPTION--
BNSF RAILWAY COMPANY

REPLY TO PETITION FOR STAY



Yellowstone Valley Railroad, Inc. ("YVRR"), hereby replies in opposition to the Petition For Stay ("Petition") filed by John D. Fitzgerald, for and on behalf of United Transportation Union-General Committee of Adjustment ("UTU"), on August 8, 2005.

SUMMARY

YVRR has not refused to comply with UTU's discovery requests, as UTU implies. Rather, YVRR has agreed to provide UTU all of the requested documents provided that UTU comply with the rules of the Surface Transportation Board ("Board") governing the production of confidential and highly confidential information. This proceeding involves a routine lease of two rail lines from a Class I railroad to a new carrier and does not, as UTU suggests, have any "unusual features". Most importantly, UTU has failed to demonstrate that the granting of a stay is warranted or necessary.

BACKGROUND

On August 2, 2005, YVRR filed its Notice of Exemption, pursuant to 49 C.F.R. Part 1150, Subpart D—Exempt Transactions, to permit YVRR to lease from BNSF Railway

Company ("BNSF") and operate two rail lines located in Montana. The exemption is scheduled to become effective on August 9, 2005, although YVRR will not commence operations until August 15, 2005. On August 5, 2005, UTU filed a Motion to Compel and on August 8, 2005, UTU filed the Petition for Stay ("Petition").

REPLY

The standards governing disposition of a petition for stay are: (1) that there is a strong likelihood that the movant will prevail on the merits; (2) that the movant will suffer irreparable harm in the absence of a stay; (3) that other interested parties will not be substantially harmed; and (4) that the public interest supports the granting of the stay. *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987); *Washington Metropolitan Area Transit Commission v. Holiday Tours, Inc.*, 559 F.2d 841, 843 (D.C. Cir. 1977); *Virginia Petroleum Jobbers Association v. FPC*, 259 F.2d 921, 925 (D.C. Cir. 1958) ("Petroleum Jobbers"). It is the movant's obligation to justify the exercise of such an extraordinary remedy, *Cuomo v. United States Nuclear Regulatory Comm.*, 772 F.2d 972, 978 (D.C. Cir. 1985), and the movant carries the burden of persuasion on each of the four elements required for the extraordinary relief. *Canal Authority of Fla. V. Callaway*, 489 F.2d 567, 573 (5th Cir. 1974). As is demonstrated below, UTU has failed to meet its burden under each of the four criteria.

UTU Is Not Likely To Prevail On The Merits

UTU essentially posits three arguments in support of the requested stay. First, UTU erroneously claims that YVRR has refused to provide UTU the lease materials without an order by the Board. When UTU contacted YVRR on August 5th, YVRR agreed to provide the requested documents but only pursuant to an appropriate protective order issued by the Board because the documents contain confidential and highly confidential information. Rather than

seek a protective order from the Board, UTU filed a Petition to Compel Discovery arguing that UTU does not consider a protective order necessary or appropriate. Accordingly, it is UTU, and not YVRR, that is failing to comply with the Board's rules governing discovery.

Second, UTU argues that it is likely to prevail on the merits because this proceeding has "unusual features". UTU, however, fails to identify any "features" of this transaction that it considers "unusual". The criteria for granting a stay in proceedings of this nature is not whether a particular transaction is "unusual" but rather whether the transaction falls within the scope of the class exemption and whether the notices comply with the Board's regulations. The transaction involved in this proceeding is a routine lease of two branch lines by a Class I railroad to a new carrier.

Third, UTU claims that the trackage rights being granted to YVRR are not incidental to the lease of the two branch lines. Trackage rights are a common feature in transactions falling within the scope of 49 C.F.R. § 1150.31 and are expressly included within the scope of the class exemption:

"This exemption also includes: *** (4) Acquisition of incidental trackage rights."

49 C.F.R. § 1150.31(a).

Moreover, as explained in YVRR's notice, the trackage rights are overhead and, thus, do not allow YVRR to serve any customers located on the joint tracks. The primary purpose of the trackage rights between Snowden and Bainville, Montana is to enable YVRR to move its locomotives and cars from one of the branch lines to the other. Consequently, the trackage rights involved in this transaction are clearly incidental to the lease of the two branch lines.

Denial Of The Stay Will Not Cause UTU Irreparable Harm

An administrative decision is not ordinarily stayed without an appropriate showing of irreparable harm. *Permian Basin Area Rate Case*, 390 U.S. 747, 777 (1968). UTU has failed to demonstrate that any employee of BNSF will suffer irreparable harm in the absence of a stay.

UTU alleges that the estimated job loss will be 9 employees as a result of this proposed transaction. Foremost, UTU's allegation is highly speculative. In any event, the allegation, even if accurate, does not rise to the level of sustaining a finding of irreparable harm. The showing of "mere injuries, however substantial, in terms of money...expended in the absence of a stay" do not constitute irreparable injury because adequate compensatory relief can be had at a later date. *Petroleum Jobbers*, at 925. Neither the Board nor the courts have found economic injuries of this nature to be irreparable because they are compensable through reparations. See Finance Docket No. 30965 (Sub-No. 1), *Delaware and Hudson Railway Co. – Lease and Trackage Rights Exemption – Springfield Terminal Railway Company* (not printed), served July 15, 1988. Indeed, the claimed loss of 72 employees was deemed inadequate by the Board to support a showing of irreparable harm. See STB Finance Docket No. 33326, *I&M Rail Link, LLC – Acquisition and Operation Exemption – Certain Lines of Soo Line Railroad Company D/B/A Canadian Pacific Railway* (not printed), served April 4, 1997.

A Stay Would Harm Shippers And YVRR

YVRR, as a short line operator, intends to improve service to the shippers located on the involved lines. Thus, delaying the implementation of the involved transaction will have a material, adverse effect on the shippers by delaying the benefits they will realize once YVRR commences operations on the involved lines. A stay would also produce significant harm to YVRR. YVRR has already staffed up to commence operations on August 15th. Any delay in

YVRR's operations will cause YVRR to incur significant expenses, result in a loss of business that will be unrecoverable and cause uncertainty among its employees and the shippers located on the involved rail lines.

A Stay Is Not In The Public Interest

UTU has failed to demonstrate how issuance of a stay would further the public interest. On the other hand, the proposed change in operations is intended to increase the efficiency of rail operations in the area and improve service to the shippers on the involved rail lines. For at least two decades, the Board and its predecessor have consistently applied the view that the public interest is served by encouraging the formation of short line and regional carriers. Consequently, granting the stay is contrary to the public interest.

CONCLUSION

YVRR respectfully urges the Board to deny UTU's Petition. The Petition falls woefully short of meeting the criteria for a stay. The involved transaction falls within the scope of the class exemption at 49 C.F.R. § 1150.31 and YVRR's notice complies with the Board's rules. Also, UTU has failed to demonstrate irreparable injury or that the public interest supports the stay. Contrary to UTU's contentions, YVRR and the shippers located on the involved rail lines will be adversely affected by a stay.

Respectfully submitted,



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Dated: August 9, 2005

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of August, 2005, I have caused a copy of the foregoing Reply to the Petition For Stay to be served on counsel for UTU, via hand delivery.

A handwritten signature in cursive script, reading "Karl Morell", is written over a horizontal line.

Karl Morell